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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Saudi Arabia must take immediate steps to address concerns of UN Special Rapporteur on counter-terrorism Amnesty International's written statement to the 37th session of the UN Human Rights Council

At its 37th regular session, the UN Human Rights Council (HRC) will consider the report of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concerning his visit to Saudi Arabia from 20 April to 4 May 2017.1

Amnesty International welcomes the preliminary findings of the former Special Rapporteur, and commends the mandate for its continuing engagement with the Saudi Arabian authorities. The organization is, however, concerned about the Saudi Arabian government's denial of access, despite repeated requests during the visit, to human rights defenders, writers, bloggers and journalists who have been prosecuted by the 2014 Law on Counter Terrorism and its Financing (the counter-terror law).

In the preliminary findings, the former Special Rapporteur expressed concerns in relation to the use of the counter-terror law against individuals peacefully exercising their rights to freedom of expression, association and assembly and noted that "the definition of terrorism in the counter-terror law fails to comply with international human rights standards of legal certainty" and "enables the criminalization of a wide spectrum of acts of peaceful expression." Since then, the current Special Rapporteur, together with five Special Procedure mandate holders have again deplored "Saudi Arabia's continued use of counter-terrorism and security-related laws against human rights defenders, urging it to end the repression and release all those detained for peacefully exercising their rights."

Amnesty International has documented a pattern of systematic repression by the Saudi Arabian authorities since 2014 in which they have virtually silenced all independent human rights defenders and critics, sentencing most to lengthy prison terms and forcing some to flee the country. The 2014 counter-terror law has been used to prosecute human rights defenders and activists on vague and overly broad charges for their peaceful activism. The Specialized Criminal Court (SCC), a court set up to deal with security and terrorism-related offences, has sentenced several human rights defenders to up to 15 years in prison in flagrantly unfair trials. Furthermore, Amnesty International has documented a worrying increase in the use of the death penalty against individuals from the Shi'a Muslim minority, including juvenile offenders, following unfair trials before the SCC.

In August 2017, human rights defender Issa al-Nukheifi was brought to trial before the SCC and charged with a number of terrorist offences relating to his human rights activism and social media posts under Royal Decree 44/A, which was issued to complement the 2014 counter-terror law. In September, prominent human rights defenders and co-founders of the Saudi Civil and Political Rights Association (ACPRA) Abdulaziz al-Shubaily and Issa al-Hamid, both of whom were convicted by the SCC, were detained to start serving eight and nine years in prison, respectively. In January 2018, human rights defenders Mohammad al-Otaibi and Abdullah al-Attawi were sentenced to 14 and seven years in prison respectively by the SCC on charges that included "dividing national unity, spreading chaos and inciting public opinion", all of which are considered terrorist crimes.

The situation has also deteriorated on the legislative front since the former Special Rapporteur published his preliminary findings on the counter-terror law. In October 2017, it was announced that a new counter-terror law had been issued to replace the 2014 law. The new law introduces specific penalties for "terrorist crimes", including the death penalty for certain acts, and continues to use an overly vague definition of "terrorism", a "terrorist crime" and a "terrorist entity", in violation of the principle of legality. The definition of a "terrorist crime" in the 2017 counter-terror law includes "endangering national unity" and "destabilizing public order and security of the community", all of which have been

1 This visit was carried out by Mr Ben Emmerson.

and continue to be used to criminalize human rights defenders for their peaceful activism. The new law further serves as a tool to suppress freedom of expression by imposing a 5-10 year prison sentence for directly or indirectly insulting the King or Crown Prince in a way that impugns religion or justice.

The former Special Rapporteur also expressed serious concern in his preliminary findings that "allegations of torture or other forms of ill-treatment… do not appear to systematically result in rapid and thorough investigations", particularly in cases involving the imposition of the death penalty. The former Special Rapporteur also notes that he received reports about due process violations in the SCC, which include "arbitrary arrests, violations of the rights to be informed of the charge, violation of the right to legal counsel… and the admission of evidence obtained by torture in breach of Saudi Arabia's obligations under Article 15 of the UN Torture Convention."

Amnesty International has documented a worrying increase in the use of the death penalty as a weapon to crush dissent in Saudi Arabia since 2013, including the cases of at least 33 members of Saudi Arabia's Shi'a Muslim community who face the death penalty. Among them are Ali al-Nimr, Abdullah al-Zaher, Dawood al-Marhoon and Abdulkareem al-Hawaj, four young men who were found guilty of security-related offences related to their involvement in anti-government protests committed when they were under the age of 18.

All four young men claimed they were tortured to "confess". They are all at imminent risk of execution.

In July 2017, the families of 14 other Saudi Arabian men from the Shi'a Muslim community learned that the Supreme Court had ratified their death sentences after they were found guilty before the SCC of violent offences related to their alleged participation in anti-government protests. Court documents show that the 14 men were subjected to prolonged pre-trial detention and alleged they had been tortured and otherwise ill-treated during their interrogation to extract "confessions". However, the judge failed to order investigations into their allegations. The SCC appears to have largely based its decision on these "confessions".

In addition, the former Special Rapporteur raised concern that there was a "need for greater transparency about civilian casualties in Saudi Arabia's extra-territorial counter-terrorism operation in Yemen" and reminded Saudi Arabia of its obligation to independently investigate any case in which there are reliable indications that civilians may have been killed or injured. Since the Saudi Arabia-led military campaign in Yemen began in March 2015, Amnesty International has documented at least 35 coalition air strikes across six different governorates in Yemen that appear to have violated international humanitarian law. These have resulted in 504 civilian deaths (including at least 153 children) and 366 civilian injuries. According to the UN, 5,144 civilians, including more than 1,184 children, were killed and more than 8,749 civilians wounded from March 2015 until August 2017. The spiralling humanitarian situation has left over 22 million people in need of humanitarian aid and over 7 million people who are on the brink of famine.

In Amnesty International's assessment, the National Commission of Inquiry, established by the internationally recognized government of Yemen and backed by Saudi Arabia, as well as the investigations by the Saudi Arabia-led coalition's Joint Incidents Assessment Team, lack transparency, independence and impartiality. Ultimately, both these mechanisms have to date failed to deter violations by all parties to the conflict, promote respect for the law, and provide justice, truth and reparation for all victims and their families.

In a positive development, the HRC passed a resolution in September mandating a group of experts to investigate violations and abuses by all parties in Yemen and, where possible, to identify those responsible. This constituted a first step towards justice for victims of human rights abuses and grave violations of international law.

Amnesty International urges the HRC members and observer states to call on Saudi Arabia to:

- Repeal the counter-terror law and related legislation or extensively revise it in order to bring it into full conformity with international law and international human rights standards, including by adopting a definition of terrorism that does not infringe on the peaceful exercise of human rights;
- Immediately and unconditionally release all prisoners of conscience, those detained or imprisoned solely on account of their peaceful exercise of freedom of expression and other human rights, including the rights to freedom of association and peaceful assembly;

- As a step towards full abolition of the death penalty, stop using the death penalty on anyone under the age of 18 at the time of their alleged offence in accordance with Saudi Arabia's obligations under the Convention on the Rights of the Child;
- Ensure that defendants receive a fair trial in proceedings that comply with international standards for fair trial, at least equal to Article 14 of the International Covenant on Civil and Political Rights, and without resort to the death penalty;
- Ensure that all allegations of torture and other ill-treatment used to extract "confessions" are promptly and impartially investigated, and those found guilty of committing them are held to account;
- Ensure that "confessions" and other statements obtained under torture and other ill-treatment are not admitted as evidence in any proceedings, other than in the prosecution of those suspected of carrying out the torture;
- Respect international humanitarian law by taking all necessary precautions to minimize harm to civilians, ending unlawful attacks, and granting full and unfettered access to humanitarian aid and commercial imports of essential goods;
- Co-operate fully with investigations by the OHCHR's independent experts and the Group of Eminent Experts on Yemen recently established by the HRC to investigate violations by all parties to the conflict in Yemen;
- Issue standing invitations to the UN Special Procedures and respond, without further delay, to requests to visit from, among others, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture the Special Rapporteur on human rights defenders.

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Human Rights Council
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Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by United Nations Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Why the Blacklist Violates UN Principles and International Law

In Resolution 31/36, sponsored by Kuwait for the Arab Group, Pakistan for the Organization of Islamic Cooperation, Sudan, the Bolivarian Republic of Venezuela, Algeria, Bahrain, the Plurinational State of Bolivia, Chad, Cuba, Djibouti, Ecuador, Egypt, and Libya, the Human Rights Council (HRC) requested the High Commissioner for Human Rights to produce a database of all businesses that "directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements."

The goal of the database is to pressure Israel to withdraw from the settlements—a move which according to the Oslo Accords should be taken only in the context of final status negotiations.

Even those opposed to settlements have reason to strongly object to the discriminatory blacklist, including on the following grounds.

1. Violates UN Principles of Equality and Non-Discrimination

The United Nations Charter states that the UN "is based on the principle of sovereign equality of all its members."1 Likewise, the founding principles of the HRC include "ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization."2 Against the founding principles of the HRC, the blacklist is designed to further the discriminatory BDS campaign which seeks to advance the Palestinian political agenda by delegitimizing Israel.

There are more than 100 disputed territories around the world, many involving occupations and settlements. Yet in no other case has the UN lobbied for the creation of a database of companies operating in the contested territory.

Western Sahara and Northern Cyprus are prime examples of this double standard.

Morocco occupied Western Sahara in 1974. Although the Security Council considers the territory occupied, Morocco has established significant settlements there, which the EU supports in the following ways:3

- The EU pays Morocco €40 million per year for the right to fish in Morocco's waters, expressly including Western Sahara.
- The EU provides Morocco with hundreds of millions of Euros in foreign aid without any restriction that the funds not be used in Western Sahara.

Turkey occupied Northern Cyprus in 1974. Although, the Security Council considers Turkish control illegal, Turkey established settlements which the EU actively supports in the following ways:4

- Turkey established universities in the territory, many of which are branches of mainland Turkish universities and have joint programs with major British institutions.
- The EU directly funds Turkish Cypriots, including settlers, at a rate of €28 million per year in the form of, *inter alia*, student scholarships and technical assistance to businesses.
- The EU helps Turkish settlers exploit natural resources in Northern Cyprus.

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1 UN Charter, Article 2.

2 A/Res/60/251.

3 Eugene Kontorovich, "Economic Dealings with Occupied Territories," *Columbia Journal of Transnational Law* 53, 584-637, pp. 600-08, 2015.

4 *Id.*, p. 615-21

UN silence on business activity in these occupied territories shows that the blacklist is not about human rights. Some have objected to the term "blacklist," claiming the settlements database is merely about corporate transparency.5 If that were the case, however, it would not be limited to Israel.

2. Business in Settlements is not Illegal

The above examples demonstrate that there is no international law prohibition against business in settlements. In fact, Article 43 of the 1907 Hague Convention obligates the occupying power to "restore and ensure, as far as possible, public order and safety." This is understood to permit the occupying power to build infrastructure, including roads, sanitation, communications and security.6 Similarly, the Fourth Geneva Convention authorizes an occupying power to do business in territory it controls.7

These principles have been confirmed in several legal rulings, including:

- A 2002 memo by the UN's own legal advisor addressing the case of Western Sahara.8
- A 2013 ruling by the French Court of Appeals in Versailles confirming that the Geneva Conventions do not bar private economic activity in settlements.9
- A 2014 ruling by another French court that settlement products and their manufacture are not illegal.10
- A 2014 ruling by the UK Supreme Court that the sale of settlement products does not aid international law violations.11

3. The Guiding Principles on Business and Human Rights do not Advocate Blacklists

Significantly, violation of Palestinian human rights is not a condition for inclusion on the blacklist. Pro-Palestinian groups claim this is because "abuses are inherent to the settlement enterprise."12 However, such a blanket prohibition on doing business with occupied territories is not supported by state practice, international law or the Guiding Principles on Business and Human Rights.

In fact, the Guiding Principles expressly envision the continued operation of businesses in areas affected by conflict. They merely call on businesses to conduct due diligence to assess the human rights impact of their activities with the aim of maintaining operations while implementing measures to protect human rights.13

Significantly, the burden to conduct due diligence is on the business itself, not on third parties like the U.N. The Guiding Principles suggest that a business can "consider" withdrawing from a conflict-area in the limited circumstance where it determines it is not able to protect human rights. Again, this is framed as an internal business decision. Even then, the business must examine the "adverse human rights impact" of withdrawing.14

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5 "Joint NGO Statement in Support of the UN Human Rights Database on Business Activities related to Settlements in the Occupied Palestinian Territory," *Amnesty International*, Nov. 30, 2017.

6 "Submission of the Institute of NGO Research, Position Paper Regarding Preparation of a Discriminatory Blacklist Pursuant to UNHRC Resolution 31/36," *NGO Monitor*, Jan. 2, 2017.

7 "Who Else Profits: The Scope of European and Multinational Business in Occupied Territories," *Kohelet Policy Forum*, June 2017.

8 Kontorovich, pp. 602-03.

9 *Id.*, p. 633.

10 *Id.*, p. 634.

11 *Id.*, pp. 631-33.

12 "Israel/Palestine: UN Settlement Business Data Can Stem Abuses, *Human Rights Watch*, Nov. 28, 2017; *see also* "Palestinian Organizations Support Release of UN Database Report and Call for Third State Action to End Corporate Complicity in Occupation," *Al-Haq*, January 2018.

13 Guiding Principles on Business and Human Rights, Principles 7; 17-19.

14 *Id.* at Principle 19.

In the case of the settlements, both Israelis and Palestinians may be adversely impacted by withdrawal of business. The Guiding Principles do not mention or promote the creation of a database of businesses operating in conflict areas. Likewise, the Working Group on Business and Human Rights' statement on Israel accepts that businesses are entitled to operate in occupied territories and does not advocate a blacklist.15

4. Violation of Due Process

The only published criteria for inclusion on the blacklist is the vague and overbroad language of paragraph 96 of the HRC's Report on Settlements.16 The referenced activities (construction, security services, utilities, banking, etc.) are deemed problematic because they "raise particular human rights violations concerns," without specifying how or why. In his January 26, 2018 report, the High Commissioner admitted that the selection criteria is not based on human rights violations, but on involvement in listed activities irrespective of the human rights impact.17

5. HRC is not Authorized to Impose Sanctions

Pursuant to Article 41 of the UN Charter, the Security Council is exclusively authorized to impose sanctions on a Member State. The HRC has no such authority. While some have argued that the blacklist itself is not a sanction,18 Resolution 31/36 expressly references Paragraph 117 of the February 2013 report of the Fact-Finding Mission on Settlements,19 recommending that private companies "terminat[e] their business interests in the settlements." This follows the call in Paragraph 12 for Israel to "immediately initiate a process of withdrawal of all settlers from the Occupied Palestinian Territory." Therefore, it is clear that the goal is to economically pressure Israel to withdraw from settlements. Moreover, at least one Palestinian official expressed hope that the blacklist would lead to sanctions.20

6. Promotes Violation of the Oslo Accords

Article 31 of the 1995 Interim Agreement reserves a number of important issues for permanent status negotiations, including settlements and borders.21 Pressuring Israel to unilaterally withdraw from settlements contravenes this provision.

7. Impairs Israel's Right to Self-Defense

Israel's "inherent right of individual or collective self-defense" under international law is affirmed by Article 51 of the U.N. Charter. Terrorist attacks against Israel trigger this right. Yet the blacklist targets Israel's security and self-defense infrastructure, thereby undermining its ability to protect its citizens. Furthermore, by including on the blacklist companies that provide security to Israeli settlements, the UNHRC implicitly legitimizes violence and murder against Israeli civilians beyond the green line—clear violations of international law.

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15 "Statement on the implications of the Guiding Principles on Business and Human Rights in the contect of Israeli settlements in the Occupied Palestinian Territory," *Working Group on the issue of human rights and transnational corporations and other business enterprises*," June 6, 2014. We note that the Working Group has not issued a similar statement with respect to any other occupied territory.

16 http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/DatabaseHRC3136.aspx.

17 A/HRC/37/39, Report of the High Commissioner pursuant to Resolution 31/36, Jan. 26, 2018, ¶ 9.

18 Valentina Azarova, "Why the UN is setting up a database of international businesses operating in Israeli settlements," *The Conversation*, Dec. 8, 2017.

19 A/HRC/22/63.

20 "Israel races to head off UN Settlement 'blacklist,'" *Ynet*, Nov. 26, 2017 (quoting Nabil Shaath).

21 "Israel-Palestinian Interim Agreement on the West Bank and the Gaza Strip," Sep. 28, 1995.